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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/830,560	05/07/2001	Nichimu Inada	206253US3PC	1157
22850	7590	04/21/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			THANH, QUANG D	
		ART UNIT	PAPER NUMBER	3764

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/830,560	INADA ET AL.	
	Examiner	Art Unit	
	Quang D. Thanh	3764	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 March 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 39-96 is/are pending in the application.
- 4a) Of the above claim(s) 44-47 and 52-93 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 39-43 and 48-51 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. _____.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/22/2004 has been entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 39, 42, 48 and 49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Re claim 39, it does not appear accurate that the sensor has the function of determining a relationship between two positions of the supporting arm. Similarly, re claim 42, it does not appear accurate that the sensor has the function of determining a vertical position of the supporting arm at a moment when a pivotal position of the supporting arm reach a prescribed range. The sensor only detects the presence of light. A microprocessor or a computer would perform the function of determining a relationship between two positions (vertical and pivotal) of the supporting arm. Applicants have not claimed a microprocessor. It is not clear how much patentable

weight can be given this functional language since the means to provide this function is not being claimed. Claims 48-49 are also rejected because they depend on a rejected claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 40-41 and 50-51 are rejected under 35 U.S.C. 102(b) as being anticipated by Canto (WO 98/57611). Canto discloses a massaging device having a pair (left and right) of supporting arms 5, each arm directly connected to a therapeutic member 6,15 (figs. 1,3,4,9) by a supporting shaft (see fig. 3 on next page); the supporting arm being pivotally supported on the massaging apparatus and the supporting arm being movable along a body of a user (fig. 3); pivotal-positioning sensors 17 configured to detect each supporting arm that has reached a prescribed range of pivotal positions; pivotal-positioning sensor means 17 for detecting a prescribed range of pivotal positions. It is inherent that the sensors 17 can detect a range of angular positions (see abstract).

6.

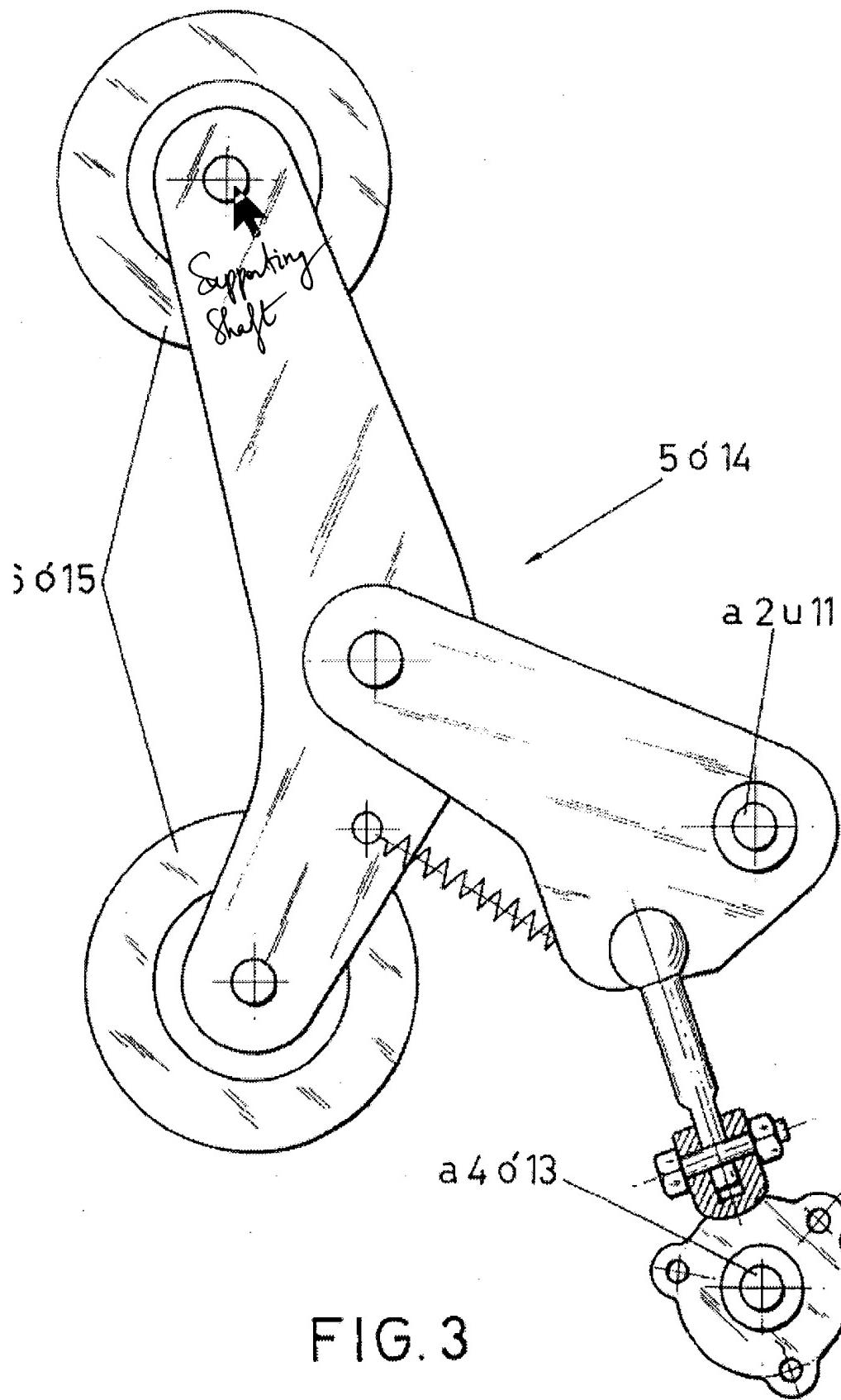


FIG. 3

7. Claim 39,42 and 48-49, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Ookawa et al. (5,792,080). Ookawa discloses a massaging apparatus comprising: a supporting arm 85 directly connected to a therapeutic member 86 by a supporting shaft (curved end of 85 in fig. 2), the supporting arm being pivotally supported on the massaging apparatus and the supporting arm being movable along a body of a user (fig. 2); and a sensor 110 configured to detect a position of a specific portion of the user with respect to the massaging apparatus by providing an output value (see abstract), which is used by a position analyzer to determine a relationship between a vertical position (upper most) of the supporting arm and a pivotal position (along the back) of the supporting arm. The sensor 110 determines the shoulder position by relative rotation positioning of the therapeutic member 86. When the device is in the upper most position, the therapeutic members rotate due to the reduced pressure (fig. 5). This rotation is sensed by the sensor 110 indicating the upper most vertical position of the supporting arm. This would appear to comprehend the claimed relationship between an upper most vertical position and the pivotal position of the supporting arm. Re claims 48-49, Ookawa discloses that the sensor can detect the position of the user's shoulder (fig. 5).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 43 is rejected under 35 U.S.C. 103(a) as being unpatentable over Canto '611 in view of Otuka et al. (4,576,149). Canto discloses a massaging device having all the features as claimed except for an optical sensor having light emitting and receiving elements. However, Canto teaches a plurality of sensors 17 having multiple tasks of controlling the turning angle of the different shafts and transmitting this to the microprocessor, these multiple tasks including multiple options of for distancing between the vertical massaging wheels, and multiple pressure options in the vertical massaging. Moreover, Otuka also teaches a massager comprising a vertical position detector 61, a width detector 74 and a projection detector 76; and each detector having sensors for detecting vertical positions, distance spacing and various projections of the massaging elements (col. 5, lines 39 to col. 6, line 68). Additionally, Otuka teaches that the sensor holders are provided with optical sensors each comprising light emitting and receiving elements (col. 5, lines 56-61). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention was made to include a an optical sensor having light emitting and receiving elements to detect both vertical and pivotal positions in Canto's device, as taught and suggested by Otuka et al, for the purpose of providing an alternative equivalent means to detect both vertically and pivotally the

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position of the massage element with respect to the user's body in order to selectively massage a portion of the user's body as desired.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang D. Thanh whose telephone number is (703) 605-4354. The examiner can normally be reached on Monday-Thursday & alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (703) 308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Quang D. Thanh
Patent Examiner
Art Unit 3764
April 13, 2004

(QT)


Danton D. DeMille
Primary Examiner